THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10756 OF 1999

07.3.2006

Between:

M.Pallavi, W/o.Komaraiah

And others

… Petitioners

AND

The Municipal Corporation of Hyderabad represented by its

Commissioner, Tank Bund, Hyderabad

And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

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ORDER:

The seven petitioners claim to be owners and possessors of the land admeasuring 5,764 Sq.yards situated at Baqshiguda, opposite D.B.R. Mills, Hyderabad. They claim that the said land forming part of survey Nos.159/1, 159/2, 160/2 to 160/26 and 160/28 of Bakaram Village admeasuring 32,834 Sq.yards and the petitioners purchased an extent of 5,764 Sq.yards under two registered sale deeds dated 30.1.1996 and 01.2.1996 from one K.Ankineedu Prasad and others. It appears that originally the property was owned by one Smt.Khurshid Shapur Chenoy and she filed a suit being O.S.No.172 of 1970 on the file of the Court of V Additional Judge, City Civil Court, Hyderabad against the respondents, when there was interference from the respondents. The said suit was dismissed. However, in the appeal filed by the legal heirs of Smt.Chenoy being C.C.C.A.No.142 of 1973, this Court by judgment dated 23.8.1978 allowed the appeal declaring the ownership of

Smt.Chenoy. The petitioners raised constructions bearing house Nos.1-2-687 to 1-2-695 and 1-2-695 (part). They allege that the respondents especially fifth respondent, the A.P.Wakf Board, orally directed the petitioners to stop further constructions and also to remove the constructions already made. The petitioners also allege that the fifth respondent tried to encroach upon the land. Therefore, the present writ petition is filed.

The Chief Executive Officer of A.P. Wakf Board, fifth respondent herein, filed counter affidavit opposing the writ petition. It is stated that Sargooh Mohiuddin is a dargah situated at Kavadiguda, opposite to D.B.R.Mills. There is also a graveyard. After conducting enquiry, dargah and graveyard were declared as Wakf in 1952 by issuing a notification. As per the approved plan and muktakhab, the land admeasuring 3,333 Sq. yards (100' X 200') is a graveyard forming part of the wakf property within Makhta Yelchi Baig Gadda. Having noticed certain variations, a Gazette notification dated 19.1.1978 was issued by Errata changing the boundaries shown in muntakhab. In 1977 one Mohammed Yaseen was appointed as Muthawalli. The Muthawalli, Mohammed Yaseen filed a suit being O.S.No.650 of 1984 on the file of the Court of V Assistant Judge, City Civil Court, Hyderabad against Mohammed Iftekhar Khan and Ramaswamy for permanent injunction. In the said suit the graveyard was shown as 9,364 Sq.yards situated near Tank Bund of Hussain Sagar, Hyderabad. Similarly M/s.A.Satyanarayana, A.Anjaneyulu and A.Narasing Rao filed a suit being O.S.No.1227 of 1985 on the file of the Court of VIII Assistant Judge, City Civil Court, Hyderabad against Shaik Yaseen and Shaik Ameer seeking injunction. The said suit was dismissed. Again, six other persons filed a suit being O.S.No.197 of 2000 on the file of the X Junior Civil Judge, City Civil Court, Hydeabad against Mohammed Mohsin and four others. Though the property is shown as graveyard, the Wakf Board or Muthawalli are not made parties to the said suit. Various other allegations made in the petitioner's affidavit are denied. It is also stated that as there is a dispute whether the property claimed by the petitioners is Wakf property and as the A.P. Wakf Tribunal is constituted under the provisions of Section 83 of the A.P. Wakf Act, 1995, the writ petition is not maintainable.

After hearing the learned Counsel for the petitioners and learned Counsel for respondents, there is any amount of litigation in respect of the property, which was allegedly purchased by the petitioners. According to the counter affidavit filed by the A.P.Wakf Board, the property claimed by the petitioners forms part of the Wakf, which was notified in 1952 in respect of it Gazette was published on 19.1.1978. If the petitioners claim that the property does not form part of the Wakf, the remedy lies in filing the application under Section 83 of Wakf Act. In this writ petition, the disputed question of title cannot be gone into. Liberty is reserved to the petitioners to avail the remedy under the Act.

The writ petition, with the above observations, is accordingly disposed of, without expressing any opinion on the merits of the claim of the petitioners. No costs.

(**V.V.S.RAO, J**)

March 07, 2006

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